CF0000063138

CA 708/2000

(2)

XII-189(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

Division Bench (Criminal)

No. S.T.No. 375/98 Name महेशराम

Father's name नानूराम जाट

Residence ढोरा - 302 मा. ढोरा Age - 30 वर्ष

Sentenced to आजीवन कारावास 302/34 on 31.01.2000

Under Section हत्यादण्ड / पश्चात् पर उम्रकैद साधारण by श्री सवाईसिंह मिश्र अति. जि. एवं सेशन न्यायाधीश, नोहर।

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement- सेशन निर्णय प्राप्ति दि -
2. Date on which copy received- - - 26-2-2000 - - - - - - - -
3. Date on which Appeal sent- - - - - 26-2-2000 - - - - - - -
4. Whether the prisoner wishes to be represented or not- - X - - -

No. - S.T.No. 375/98 - - Name - महेशराम उर्फ नानूराम जाट - -

Confined in - केन्द्रीय - - - - - - Jail - बिलासपुर (मध्य-प्रदेश) - - -

No. - - - - - - - - 378 - - Dated - - 26-2-2000 199 - - - - - -

Forwarded to the रजिस्ट्रार महोदय, माननीय उच्च न्यायालय जबलपुर (मध्य प्रदेश) - - together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent

Jail

Date of receipt in ---------- Office ----------

Date of receipt of record to accompany the - - - - - - - - - - - -

Mode of Appeal to the Appellate Court- - - - - - - - - - - - - -

No. - - - - - - - - - - - Date .....199 ----------

Forwarded to the :-

(15)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.708... **सन् 200**0

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and
Hon'ble Mr. Sunil Kumar Sinha, J.

8-1-2007

Mr. Ram Kumar Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, Ag.C.J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 31st January, 2000, passed by the Sessions Judge, Ambikapur in Sessions Trial No.375/98, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo S.I. for six months.

The case of the prosecution is that on 24-10-1998 at about 12.30 p.m. Madwari Ram (PW-2) lodged a report Ex.P-3 in Police Station: Lakhanpur to the effect that on that day he was supervising the plastering of his grainery, at that time, his daughter Kavita and one Kameshwar were with him. At that time, Mst. Jugeshwari (PW-3), wife of Kameshwar, came crying and said that Mahajan has murdered Gortahin (Mrs. Dinobai) and she

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मामला क्रमांक ..... G.A. 708/ ..... **सन् 2020**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

asked them to intervene on which they ran towards the house of Mahajan and saw that Dinobai was lying outside the house of Mahajan, there was blood on the face of Dinobai, blood was oozing out of the head, she was breathing, but unconscious. Thereafter, villagers Andhu, Sandhu & Jholaram were called, they have taken Dinobai to the hospital in a tractor and she died on the way.

Receiving this report, the Investigating Officer left for the scene of occurrence. After giving notice Ex.P-13 to the Panchas, he prepared the inquest Ex.P-14 on the body of Dinobai. Site plan Ex.P-16 was prepared. The body of Dinobai was sent for post-mortem examination to Primary Health Centre, Lakhanpur under Ex.P-1 where Dr. R.N. Gupta (PW-1) conducted post-mortem and prepared the post-mortem report Ex.P-2 in which he opined that the cause of death is head injury due to trauma caused by injury No.2 & 3 and the nature of death is homicidal. Merg intimation Ex.P-4 was given by Madwari Ram (PW-2) and based on that, the F.I.R. Ex. P-3 was registered.

The Investigating Officer seized plain soil and blood stained soil under Ex.P-5. Stone, the weapon of offence, was seized under Ex.P-6 based on the memorandum Ex.P-8 of the accused. The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, from where the report Ex.P-19 was received.

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मामला क्रमांक CD...A.708/... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After completion of investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur, where the prosecution examined eight witnesses to establish charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that the witnesses are liers and he is innocent. Learned Sessions Judge after hearing counsel for respective parties convicted and sentenced the accused as aforementioned.

We have heard Mr. Ram Kumar Tiwari, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

In this case, all the witnesses have turned hostile i.e. Madwari Ram (PW-2), who lodged the first information report and gave merg intimation Ex.P-4 has stated in his evidence that he did not saw the accused, and he has not supported the prosecution case. Mst. Jugeshwari (PW-3), about whom it is stated that she saw the accused assaulting the deceased and she informed PW-2 & her husband about the assault being made by the accused on deceased Dinobai, has also turned hostile and not supported the case of the prosecution. She has stated in her evidence that she did not saw the accused assaulting the deceased. There is no

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

other ocular evidence connecting the accused with the crime in question.

As far as the recovery of stone is concerned, the recovery witness has stated in his evidence that the stone was not recovered at the instance of the accused. Moreover, J.P. Gupta (PW-7), the Investigating Officer, has stated in para 15 of his evidence that based on the memorandum, the stone was seized by him, he has not stated what kind of information was given by the accused, whether the stone was produced by the accused, and the prosecution witness has not supported the recovery. Therefore, based on this evidence of the Investigating Officer, the prosecution has failed to establish that in fact the accused gave information and based on that information, the stone was seized. Moreover, there is no serologist report to show that human blood was found on the stone and that too same was of the blood group of the deceased. Therefore, even if recovery of the stone is believed, even then, the recovery of stone does not connect the accused with the crime in question.

The only evidence on which learned Additional Public Prosecutor made emphasis is the evidence of Mohan (PW-6) who has stated in his evidence that one day before the incident, Panchayat was convened at the instance of Mahajan, the accused/ appellant herein, and in that Panchayat the accused said that on account of massage done by Dinobai, his disease has increased, on

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which the Panchayat asked them not to quarrel. Merely, based on this evidence, the accused cannot be connected with the crime. This circumstance can be taken into consideration as a corroborative piece of evidence that there is no substantive piece of evidence connecting the accused with the crime in question. Therefore, merely on the basis of the evidence of Mohan (PW-6) the accused/appellant cannot be connected with the crime in question.

In the circumstances, we are of the considered opinion that the finding of the trial Court is not based on any legal evidence connecting the accused with the crime in question. The judgment of the trial Court convicting and sentencing the accused/appellant under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal is allowed. The judgment of the trial Court convicting and sentencing the accused/appellant under Section 302 of the I.P.C. is set aside. He is acquitted of charge under Section 302 of the I.P.C. He be set at liberty forthwith, if not required in any other case.

Sd/-
Acting Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Soma

P.T.O.